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Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

14 CR 272 (JSR)

5 ANTHONY ALLEN AND ANTHONY
6 CONTI,

7 Defendants.

-----x

8 New York, N.Y.
9 March 10, 2016
10 4:15 p.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

15 UNITED STATES DEPT. OF JUSTICE
16 Criminal Division

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18 CAROL SIPPERLY

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1 (Case called)

2 (In open court)

3 THE DEPUTY CLERK: March 10, 2016. This is United
4 States v. Anthony Allen, docket number 14 CR 272, defendant
5 number 5. Will everyone please be seated and will the parties
6 please identify themselves for the record.

7 MR. YOUNG: Good afternoon, your Honor. Brian Young,
8 Carol Sipperly, and Michael Koenig for the United States. With
9 us at counsel table is Christopher Neary, our paralegal.

10 MR. SCHECHTER: Michael Shechter and Casey Donnelly
11 for Mr. Allen, who is present in court.

12 MR. EKELAND: Good afternoon, your Honor, Aaron
13 Williamson and Tor Ekeland on behalf of Anthony Conti, who is
14 also present.

15 THE COURT: Good afternoon. We're here for sentence.
16 I want to say before we start the difficult work ahead of us
17 that I am very grateful to all counsel in this case for their
18 really superb work throughout this case, but not least in the
19 presentation of their memoranda for sentencing and other
20 submissions for sentencing, all of which were extremely helpful
21 to the Court.

22 I think for purposes of loss calculation, which we'll
23 get to in a moment and other guideline calculations, I'll hear
24 from counsel for both defendants, but then we're going to
25 bifurcate and deal first with the sentence for Mr. Allen and

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1 then the sentence for Mr. Conti, because these are two separate
2 individuals and they need to be separately considered. But
3 there was common themes on the loss calculation and on the
4 guideline calculation where there were objections made, so I'll
5 hear from both counsel just on that portion of the colloquy.

6 I am required by federal law to calculate a guideline
7 range for each defendant and I am required to do that before we
8 do anything else and so I will carry out that obligation. But
9 I want to make clear at the outset and it will come as no
10 surprise to any of the counsel in this case that the guideline
11 calculation will have little or no effect on my sentences. The
12 guidelines in this Court's view are inherently flawed,
13 irrational, unreasonable and nowhere is that more shown than in
14 this very case.

15 There's a debate which we're about to hear fleshed
16 out, though it's already in the papers, over the loss
17 calculation, and if the loss were as the defendants believed,
18 namely, zero, then the sentencing guideline range would be zero
19 to seven months. And if the loss calculation was as the
20 probation officer, who also did a splendid job, were to be
21 adopted, then the guideline range jumps, because loss is the
22 single biggest factor, approximately 50 percent of the
23 calculation, jumps up to many years. I think for Mr. Allen it
24 jumps to 87 to 104 months. And if, as the government asserts
25 the real effective loss was even much larger, not perhaps in a

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1 technical sense but in a sense that the Court is urged to
2 consider, then we jump right up to life in prison. And all of
3 this is in a situation in which both sides, both the defendants
4 and the government, are agreed that on the particular facts of
5 this case it's rather difficult to calculate loss. Not
6 impossible I don't think, but certainly far from an easy task.

7 So there we have the mighty sentencing guidelines
8 proclaiming in effect that the sentence of these two defendants
9 could under a certainly not impossible calculation of the
10 guidelines be anywhere from zero months in jail to lifetime
11 imprisonment and that all in a situation where loss is, as the
12 parties agree, difficult to calculate.

13 To my mind that speaks to the utter poverty of the
14 guidelines; their inherent irrationality, their complete
15 insignificance in achieving justice and I will calculate as I'm
16 required to do the guidelines, but I give you that temperate
17 statement in advance so that you know that my sentence will not
18 be materially affected by the guidelines.

19 All right. So, let's talk first about the calculation
20 of the loss which the presentence report, adopting essentially
21 the government's expert position, puts at \$1,149,671.76, thus
22 creating the illusion of precision in an area where all sides
23 agree precision is impossible.

24 So let me hear from defense counsel, since you believe
25 that's not a reasonable calculation.

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1 MR. SCHECHTER: Thank you, your Honor. And to be
2 clear, although your Honor referred to the FBI accountant as an
3 expert, I think the government does not put forward this
4 individual as an expert. In fact, it is the government's
5 position that this is simply mathematical computations that any
6 witness could, any lay witness could perform and they have not
7 submitted any kind of expert analysis at least as that term is
8 known by the Federal Rules of Evidence.

9 Your Honor, the intended loss under the new revision
10 to the guidelines effective in November limits the calculation
11 of intended loss to the amount of pecuniary harm the government
12 is able to prove by a preponderance of the evidence the
13 defendant purposely sought to inflict. It is limited to his
14 subjective intent. It is the amount, it is to be calculated
15 the amount that the government proves the defendant had a
16 conscious object to cause. The Sentencing Commission
17 specifically considered the question as to where intended loss
18 should be limited to the amount that the defendant purposely
19 intended or whether it should also include amounts that may
20 have been intended by other participants in jointly undertaken
21 activity. Although that was the position that was urged by the
22 Justice Department, that position was rejected by the
23 Sentencing Commission. So it is limited, this exercise is
24 limited to determining what is the amount, is there an amount
25 that can be calculated as the specific amount of loss that

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1 Mr. Allen purposely sought to inflict, and in this
2 circumstance, and I should say it even is clear under the
3 Sentencing Commission's pronouncement that he's not responsible
4 for losses that he might have possibly or potentially
5 contemplated, the Sentencing Commission says that's to be
6 excluded as well from the calculation of intended loss.

7 It is stipulated among the parties that Mr. Allen had
8 no knowledge of any of the particular swaps that were the
9 subjects of whatever requests had been made in this case. He
10 doesn't know the size of the swap, wouldn't know who the
11 counter party was, and would not know what amount, if any, was
12 to be caused.

13 In addition, Mr. Allen himself received only 16
14 requests. He responded to only four and the government found
15 that one of those four was followed by a submission which,
16 according to their analysis, was inconsistent with the request
17 that was received. So it's just three of the four to which he
18 responded they believe that, even the government believes the
19 submission was consistent with the request.

20 In calculating intended loss, the government we submit
21 ignores the sentencing guidelines and looks instead at 201
22 requests and analyzes -- does some analysis to determine what
23 is the possible loss which may have resulted to counter parties
24 from those 201 requests.

25 THE COURT: So why -- I know they group this under

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1 intended loss, but why isn't this a reasonable approximation of
2 actual loss where actual loss does include reasonably
3 foreseeable pecuniary harm?

4 MR. SCHECHTER: That's true. Still, your Honor, it
5 is, it is methodology that they have gone about to calculate
6 some amount of -- first of all, the government I don't think
7 does take the position that this is an approximation of actual
8 loss.

9 THE COURT: No, but I've got an independent duty to do
10 the best I can to figure out what the loss is and if actual
11 loss is a better measure than intended loss I should adopt
12 that. No one claims in this case but just to show the problem
13 if actual gain were a better measure or a fallback measure
14 because you couldn't calculate loss then I would adopt that.
15 So looking at it as actual loss, reasonably estimate. It's not
16 a perfect analysis, but why isn't this actual loss?

17 MR. SCHECHTER: I think the government stipulates they
18 have no ability to calculate actual loss.

19 THE COURT: I'm taking the methodology they use and
20 putting a different, if you will, gloss on it and why isn't it
21 a reasonable way to determine actual loss?

22 MR. SCHECHTER: I guess I will first note that of
23 course the government bears the burden of proof here and I
24 think the government submits that they can't meet that burden.
25 Putting that aside I'll respond to the Court's question. The

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1 methodology is completely flawed. They have no -- they could
2 have, I suppose, gone to the counter parties and said, okay,
3 here's the trading information, what loss did you suffer on
4 that particular day. It would have been -- I don't know that
5 that would have been difficult to do, and they could have then
6 submitted some approximation of the actual loss. They chose
7 not to --

8 THE COURT: That's right, but I guess what prompts
9 this question from the Court is the guidelines say actual loss
10 means the reasonably foreseeable pecuniary harm that resulted
11 from the offense, so in some ways, in just another example of
12 "guideline-ese," they're mixing up intended loss and actual
13 loss and applying the language that you think would be part of
14 intended loss to actual loss and eschewing it from the
15 definition of intended loss. But, hey, they'll do what they
16 want.

17 MR. SCHECHTER: Yes, well -- I think there's a bunch
18 of loss. First and foremost the government has no ability and
19 didn't even attempt in the course of this trial to say that the
20 LIBOR submissions were inaccurate or would have been different
21 had there not been a request. And so we don't know and the
22 government, we have no, sitting here, we have no knowledge, the
23 government has offered no evidence that the LIBOR submission on
24 any given day would have been different had there not been a
25 request. In fact, they include in this list of 200 requests,

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1 114 that their own analysis, where their own analysis showed
2 that the submission was inconsistent with the request that was
3 received and yet, in order to, I submit to get the number as
4 high as possible, they include requests in their calculation
5 for which they don't even believe there's evidence that the
6 submission, that there was any attention paid to the
7 submission.

8 THE COURT: So going back to intended loss, your
9 client and his co-defendant attempted to rig the LIBOR rate in
10 such a way that it would be otherwise than it would have been
11 and that was for the purpose of gaining benefits at their end
12 which would then be ipso facto detriments at the other end. So
13 if we were able to calculate from using that approach, wouldn't
14 it be a lot more than a million dollars?

15 MR. SCHECHTER: Well, your Honor, I think part of the
16 problem is that, and it's an issue with the sentencing
17 guidelines as your Honor pointed out. This is just, there is
18 just not a way that one can -- the sentencing guidelines are
19 not that helpful, particularly under the unique circumstances
20 of this case. I will quarrel with one --

21 THE COURT: I totally agree with that.

22 MR. SCHECHTER: I will quarrel with one statement made
23 by your Honor. Your Honor said that for their end. And to be
24 clear, this is, as we said in our submissions, this is a very
25 unique set of facts. Your Honor has tremendous amounts of

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1 experience, has seen many, many criminal cases, defended them,
2 prosecuted them. I submit that this, there is nothing like
3 this particular case when your Honor said to help their end, in
4 fact, it's also, there is no dispute that this was not for
5 their end, that there was no personal gain --

6 THE COURT: No, no, I didn't mean a personal gain, but
7 to help their customers, to help their bank. They weren't
8 doing it as sleepwalkers. They had a reason for doing it.

9 MR. SCHECHTER: It is relatively rare that there is a
10 criminal offense brought before the Court where there is no
11 personal gain, there is no motive for the offense. It happens.
12 I think there's -- but it separates this case from certainly a
13 vast majority of fraud cases that your Honor sees. I'll
14 address that at a different time with the Court's permission.

15 THE COURT: Yes.

16 MR. SCHECHTER: But on the subject of the application
17 of the guidelines, if one is simply to apply the terms of the
18 guidelines, there is no calculable intended loss. There is no
19 evidence that Mr. Allen -- certainly the jury found, in all
20 likelihood that there was a point in time, perhaps the jury's
21 verdicts could be based on one of the four e-mails that he
22 responded to that he chose one estimate of borrowing costs over
23 another with, mindful of what was going to be helpful to his
24 employer. That doesn't allow us to come to a calculation of
25 what loss, if any, he intended. And so I think just from a

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1 pure application of 2B1.1 there is no loss that the government,
2 no intended loss that the government is able to establish.
3 There's many flaws in the methodology. I can take the Court
4 through them if that would be --

5 THE COURT: Well, I assume you are alluding to your
6 papers and I've read your papers carefully so why don't we put
7 that on hold at least for the moment.

8 Let me hear from co-counsel before we go to the
9 government.

10 MR. WILLIAMSON: Your Honor, as co-counsel points out
11 the intended loss numbers are based on -- the majority of the
12 requests taken into account by the government's analysis were
13 requests to the government's witness, Paul Robson, and there's
14 been no evidence that my client was aware of those specific
15 requests or possibly could have intended, specifically intended
16 any harm caused by them. I would also point out that the
17 government, the government's analysis assumed that the
18 defendants intended to move LIBOR by one basis point every time
19 they received a request. I don't believe there's evidence in
20 the record for that. Their assumption that it's one -- their
21 argument that one basis point is a reasonable number because
22 there were sometimes requests to move the number by more than
23 that, but every communication reflecting such a request is,
24 again, a request to Mr. Robson and again there's no evidence
25 that my client was aware of requests that specifically asked

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1 for movement of a certain number of basis points and so I would
2 submit that one basis point is not necessarily a reasonable or
3 a conservative estimate. And that's all I have.

4 THE COURT: All right.

5 (Continued next page)

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1 MR. SCHACHTER: May I make one other point, one flaw
2 of the methodology I wish to emphasize. The government's
3 analysis also concludes that, in reaching this one eighth of a
4 basis point, we are going to assume that every single time
5 there was a request that LIBOR was affected by one eighth of a
6 basis point because the submission was affected by one basis
7 point.

8 It ignores a submission by KPMG, which we have
9 attached to our papers, which concluded that more than
10 50 percent of the time, Rabobank's submission was kicked out of
11 the eight middle grades. Therefore, whether the impact,
12 whether the request was impacted by one basis point or two
13 basis points or half a basis point, in more than half of those
14 instances, it wouldn't have had -- certainly there is no basis
15 to conclude it would have had a one eighth of a basis point
16 effect.

17 There is many flaws in the methodology, that is my
18 point.

19 THE COURT: Let me hear from the government.

20 MR. YOUNG: Judge, I think it was in 2008, Lee Stewart
21 got into a fight with Damon Robbins on the trading floor about
22 Rabobank's submission that day.

23 While it may be difficult to quantify loss in this
24 case, I think it is clear that Lee Stewart was upset because he
25 knew that it was money at stake, and the purpose of the scheme

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1 was to make money at the expense of a counterpart.

2 THE COURT: I agree with that, but the technical
3 problem we have -- frankly, that fact looms in my mind far more
4 importantly than any of the stuff we are going through right
5 now -- but the guidelines say I have to calculate loss.

6 MR. YOUNG: Here is the best way we can think of to do
7 it. We thought, we took written submissions, written
8 requests -- I think there were 200 something of them -- on
9 those days we assumed -- that doesn't include verbal requests,
10 which is how they generally communicated -- on those days we
11 assumed that the requester wanted to move Rabobank's submission
12 by at least one basis point, by one basis point. We know that
13 often they asked for more.

14 If they were successful in moving Rabobank's
15 submission by one basis point, that would cause at least a one
16 eighth change in the fix. So our baseline assumption is every
17 time somebody asks the Rabobank's submitter to change the
18 Rabobank's submission on their behalf, though intended to cause
19 a one eighth basis point change in the overall LIBOR effects on
20 those specific dates, we found out what Rabobank's positions
21 were vis-a-vis on the counterparties, assumed the movement
22 adverse to the counterparty by one eighth of a basis point, and
23 that is how we got 1.139 million or whatever we came up with.
24 That is the best way that we can think about doing it.

25 But I would submit --

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1 THE COURT: Built into that are all sorts of
2 assumptions that are really just -- you call them reasonable
3 estimates, someone might call them specifications.

4 MR. YOUNG: We have to do the best that we can. Under
5 this circumstance, it turns out that the defendants have
6 committed a crime that just makes it very difficult to quantify
7 the loss that they caused.

8 THE COURT: All the more reason why the guidelines
9 don't really fit this situation very well, assuming they fit
10 any situation well. My own view is this. I think it is a very
11 close call.

12 I think, in the end, under all the facts and
13 circumstances, the government's approach -- flawed though it
14 is, more speculative it is in numerous respects -- is not so
15 unreasonable that it can't be adopted by the court. I want to
16 stress again how irrelevant all of this is to my sentence. My
17 sentence would be the same, the same, if instead of the loss of
18 1.14967, 1.76, or it was zero. Zero, that's really not the
19 right way to put it. It was incalculable. No one knew what it
20 was. It does not affect my sentence.

21 I do think when all is said and done, the government
22 came up with something that was not unreasonable, and so I will
23 adopt that. The calculation, now you will notice again how
24 absurd the result is. This adds 14 points to the guideline
25 range. The guideline range for the defendants is approximately

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1 twice that amount. We are talking about 50 percent of the
2 guideline calculation is based on what is, at best,
3 questionable approach to calculation, though not an
4 unreasonable one, I so find.

5 Let's go on to the two-point increase involving ten or
6 more victims. Let me hear from defense counsel on that.

7 MR. SCHACHTER: Your Honor, our argument is the same
8 as laid out in our papers. They did not prove any actual loss
9 that was sustained by any victim that was caused by Mr. Allen.
10 In fact, I believe that probation found that there was no
11 pecuniary loss to any victim, and on that basis, there is no
12 basis for the two-level enhancement.

13 THE COURT: Your view is that, for example, is as some
14 of the witnesses in the trial who said if we had known this was
15 going on, we never would have invested, they are not, for these
16 purposes, a victim, even though they are in some sense a
17 victim?

18 MR. SCHACHTER: Yes. Because the guidelines define
19 victims to be someone who sustains a monetary harm. None of
20 those witnesses were able to say they sustained a monetary
21 harm.

22 THE COURT: I wanted to be clear on that point, that
23 what I understood in your submission, anything you wanted to
24 add.

25 MR. WILLIAMSON: One point, your Honor.

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1 The government's actual loss calculation was based on
2 the assumption that when Paul Robson, again, quote, was
3 requested to make a particular submission, and after having a
4 been asked where he thought LIBOR would sit that day, that when
5 he quoted to the requester a number that a broker had told him
6 earlier in the day, that that necessarily would have been the
7 number that he would have submitted, absent a request.

8 I consider that also speculative, your Honor. I think
9 that sort of speculation is less supportable in an actual loss
10 calculation.

11 THE COURT: Let me hear from the government.

12 MR. YOUNG: Judge, I think this is a similar analysis
13 to what we just talked about. However, in these three
14 instances, what we did was look at three chats where
15 Mr. Robson, or whoever the submitter was, indicated a number
16 that he was thinking of before the request, changed the number
17 after the request.

18 So those instances, we could go back and see how much
19 the LIBOR fix changed that date. That is what we did. We did
20 the counterfactual LIBOR effects. We affected ten different
21 financial institutions. I mean, I guess it is technically true
22 that Mr. Robson didn't say, I intend to submit X on this day,
23 but he did say brokers are telling me X, and then he submitted
24 X plus five.

25 THE COURT: One could draw the inference.

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1 MR. YOUNG: Judge, we had submit on the papers beyond
2 that.

3 THE COURT: I do think -- although I think, again,
4 there are problems with the analysis -- but I think it is a
5 little stronger than the loss calculation, so I will do the
6 two-point increase.

7 I don't need to hear further argument on the other
8 points. I think there was an abuse of a position of trust, and
9 I know the arguments that are made against that. I agree with
10 the government's position there.

11 I also agree, in Mr. Allen's case, that he
12 orchestrated a scheme that involved five or more participants,
13 etc., so there is the four-point adjustment for role.

14 In the case of Mr. Allen, now we will just focus on
15 Mr. Allen for a few minutes, and then come to Mr. Conti later.

16 The court determines that the offense level is 29, the
17 criminal history category is Roman numeral I, and the guideline
18 range is therefore 87 to 108 months.

19 Now that we have gotten that stuff out of the way,
20 let's talk about the real issues. Let me hear first from
21 Mr. Allen's counsel, then from the government, on what sentence
22 I should impose, taking account of the statute that I do think
23 makes a lot of sense, Section 3553(a) of Title 18.

24 MR. SCHACHTER: Your Honor, the 165 letters that were
25 submitted to the court --

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1 THE COURT: Which the court found very valuable, and
2 in some cases pointed, and I am very grateful to you for having
3 submitted those.

4 MR. SCHACHTER: Your Honor, we submit that they show
5 the court that Mr. Allen is a very, very good and kind person
6 with two small children who need him. His daughter Fay, who is
7 five years old, will need serious surgery in the near term and,
8 your Honor, needs her father with her.

9 Mr. Allen's loving partner of 25 years, Tracy, who was
10 present in the United States with Mr. Allen throughout the
11 trial, and is here today as well, loves him, depends on him.
12 You may have noted Mr. Allen's aging parents, who also were
13 present throughout the course of the trial. They love him.

14 THE COURT: Of course this is a problem in a great
15 many cases. The argument you're making has weight, but it
16 cannot be the whole story, because for two reasons. One is
17 that, in a very large number of cases where crimes are
18 committed, the victims include the perpetrators having family.
19 You could even make the argument -- not without some force --
20 that by committing a crime that is punishable by imprisonment,
21 the perpetrator knowingly or unknowingly sets out to victimize
22 the people he purports to love best.

23 That doesn't mean that I shouldn't take account of the
24 harm to them. That is what I will do. But I want to suggest
25 that the argument is sort of double-edged in some ways.

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1 MR. SCHACHTER: Well, your Honor I guess I'll respond
2 in two ways. One of, of course, 3553(a) starts with examining
3 the characteristics of the man who has been convicted that is
4 before your Honor for sentencing.

5 THE COURT: Yes. That is a good point.

6 The very first item in -- let me just pull it out --
7 Section 3553(a)(1), the court, first and foremost, is to look
8 at, quote, the nature and circumstances of the offense and the
9 history and characteristics of the defendant.

10 The fact that those are grouped together as the
11 primary thing that the court is told to look at shows that it
12 is a two-edged sword.

13 MR. SCHACHTER: Certainly, your Honor. I will
14 address, of course, the nature of the offense as well.

15 But the man that is before, it is important to
16 understand who he is, and we think that that the letters that
17 are submitted by friends and family, that speaks volumes about
18 the character of Mr. Allen. Because the court is not merely
19 judging the offense conduct -- that's obviously a very
20 important component, and I will address that -- but also the
21 question is what kind of penalty is appropriate for this man.

22 To determine that, we submit that your Honor needs to
23 understand -- and we have tried to paint a picture of the
24 man --

25 THE COURT: Unless the government thinks otherwise, I

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1 think you have established, the defense has established, that
2 Mr. Allen is, in most respects, a good person. He is clearly a
3 good family man. He is someone who doesn't engage in
4 ostentation or excesses. He has many commendable qualities,
5 all of which I think are important to sentencing, and all of
6 which I will take account of.

7 The government focuses on a different aspect. They
8 point out that, you know, the people who wrote these letters,
9 of course, were not present and they didn't see the evidence.
10 The evidence, in the court's view, to be frank, was very
11 strong. While otherwise leading a blameless life, Mr. Allen
12 chose to commit -- and over a period of time, not just a
13 one-time deal -- a serious crime.

14 The government also argues that he lied about it on
15 the stand, but I noticed they didn't ask for an obstruction of
16 justice calculation in that respect, and I am not going to make
17 such a finding, but the jury could, and that is inherit in the
18 verdict.

19 Let me just pause, though, and see if the government
20 agrees about what I have just said about the character of
21 Mr. Allen.

22 MR. YOUNG: We agree as far as Mr. Allen's home life
23 and the way he interacts with his neighbors. We would submit
24 that there are aspects of this crime which present a different
25 side of his character.

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1 THE COURT: Back to you, Mr. Schachter.

2 MR. SCHACHTER: Well, I think that one thing that your
3 Honor has said is very important, and that is that other
4 than -- I don't recall your Honor's exact words -- but other
5 than the conduct which was considered by the jury, we submit
6 that the record shows that Mr. Allen has led a model life of
7 integrity and kindness and caring, and we think that his family
8 circumstances are certainly considerations that the court
9 should consider.

10 THE COURT: I agree. The word "model" may be a little
11 strong. I think I used the word blameless. But I agree that
12 those are all things I need to factor in.

13 MR. SCHACHTER: Putting aside -- I'll take that
14 next -- the specific LIBOR-related conduct, there are also
15 letters which demonstrates Mr. Allen's conduct in the
16 workplace. His former coworkers wrote on his behalf, and they
17 spoke to his integrity in the workplace as well. We obviously
18 need to speak about the LIBOR-related conduct, but his
19 coworkers say he was, was, a person of integrity in the
20 workplace. He was no different to his colleagues than he was
21 to his family and friends, that they all looked to him as being
22 a person of virtue and integrity.

23 In assessing the characteristics of the defendant, we
24 submit, your Honor, that is very important, as well as the fact
25 that Mr. Allen has never had a brush with the law. There is no

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1 dispute to that, and as the ABA Task Force noted, that is a
2 factor which should be considered in determining whether a jail
3 sentence is warranted, as well as its length. It is different.
4 I think, your Honor, many times -- not always -- but many times
5 when --

6 THE COURT: The last I checked, the ABA task force
7 doesn't make the law of the land, much as they hope to.

8 MR. SCHACHTER: Or should. Or should.

9 Jail is a very serious penalty, and we need to
10 consider whether, as a society, under what circumstance that is
11 a penalty which needs to be imposed. And I think that --

12 THE COURT: I am not sure how far that cuts. I
13 basically agree with that point, but I would note, just so that
14 it is out there, for better or worse, we are a highly punitive
15 society. We throw people in jail for offenses that are trivial
16 compared to anything that was committed in this case.

17 We have 2.2 million people in prison or jail right
18 now, the so-called mass incarceration. That is by far the
19 highest percentage and the highest absolute number of any
20 country in the world, civilized or uncivilized.

21 If all were to look at it with a cold, cynical point
22 of view, one would have to say that the American society has
23 chosen jail as its preferred approach to crime.

24 MR. SCHACHTER: I think that is right, and I think
25 that many question whether or not that is a reasonable approach

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1 that accomplishes anything at all. That is a subject for
2 discussion another time.

3 I think that I have found, as a prosecutor, your
4 Honor, that generally what causes somebody to be prosecuted and
5 incarcerated is not always, but very frequently it has been a
6 life of corner-cutting, a life of mild cheating, that has
7 brought this person within the government's focus. Not always,
8 but frequently. Here, there is no such evidence. The evidence
9 is to the contrary. These letters tell a contrary story, and I
10 think that that matters.

11 We also note, as we did in our papers, that Mr. Allen
12 waived extradition. He voluntarily came here immediately to
13 answer these charges when he could have fought the government
14 in a lengthy extradition battle. Who knows how that would have
15 turned out, but it deserves consideration by your Honor in what
16 we submit is a complicated, a very difficult sentence.

17 Now, I would like to turn to the offense. I submit,
18 your Honor, that there are important things about this
19 particular offense that make it different than almost any other
20 fraud offense that has come before the court or that the court
21 has experienced. I am going to try to take the court through
22 the many ways in which this offense is significantly different.

23 The first, most glaring, and I think the factor that
24 is most worthy of the court's weighty consideration, is that
25 this offense was not committed for personal gain. It resulted

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1 in no personal gain. The only conceivable motive was to help
2 one's employer. That doesn't excuse illegal conduct.

3 THE COURT: Well, what makes you think that is so
4 unlawful? When we get to crime in the suites, as it is
5 sometimes referred to, often there is no direct gain. But by
6 doing a "good job," meaning one that leads to greater profits
7 or greater enhancement of advantages or whatever, depending on
8 the case, for the company, the defendant also advances his own
9 future in the company, sometimes directly through bonuses, but
10 sometimes indirectly, just through achieving an enhanced
11 position. I am not so sure that is so unusual.

12 MR. SCHACHTER: I submit that a vast majority of the
13 fraud, while certainly there are the kinds of cases, I am going
14 to distinguish those from Mr Allen's circumstance, but I submit
15 that a vast majority of the fraud cases that your Honor sees
16 that are prosecuted are motivated by greed. It is somebody who
17 has set out to defraud somebody else to put money in their
18 pocket. That is what they are out to do. It is venal.

19 THE COURT: This is not a debate we need to have,
20 because whether it is common or uncommon, I understand the
21 distinction you're making.

22 But, for example, all the people who were involved in
23 the mortgage fraud cases, that most of whom were not
24 prosecuted, but all of whom were doing deeds that led to the
25 prosecution of their companies, were seeking to advance the

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1 economic position of the company. They weren't putting money
2 directly in their pocket by doing that, they were helping their
3 company with its profitability in ways that, at least so far as
4 the company was concerned, were later determined to be
5 fraudulent.

6 I think it is a different motivation, if you will,
7 that is what we are really talking about here. There are
8 people who go out and commit economic crimes so that they can
9 get rich and because they are greedy, but there are a
10 meaningful number of people who commit economic crimes because
11 it advances their position in terms of the company or financial
12 institution or whatever that they are a part of. This may be
13 the latter type, but I think both cases exist in some numbers.

14 MR. SCHACHTER: As your Honor noted, individuals, in
15 the example that the court provided, were not prosecuted
16 criminally. There are civil regulatory agencies that may
17 pursue individuals in those matters. The use of the criminal
18 hammer is for the most egregious cases, because the government
19 has a range of weapons. Not all are appropriate for every
20 circumstance. As a general matter, because the criminal hammer
21 can result in somebody's incarceration, I think it should be
22 reserved for the most venal.

23 In assessing venality, I think it is fair to look to
24 the motivation and is this someone who was greedy and who was
25 acting to harm others or to put their money in their own

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1 pockets or was this a different motivation. I think it is a
2 relevant factor. I submit it is a relevant factor. I think it
3 is a rare circumstance where it is not motivated by personal
4 gain that --

5 THE COURT: Just so we can move on, I agree with you,
6 it is a relevant factor. We can debate how rare or unrare that
7 kind of situation is, but the point from your purposes is
8 simply that this was not a crime, in your view, that was
9 committed for personal gain.

10 MR. SCHACHTER: Yes. Just to address the government's
11 response that they submitted on that, that they have said in
12 their papers, that, well, maybe it was done to benefit the
13 overall, the bank's bonus pool. I wish to say there is no
14 evidence of that whatsoever. Mr. Robson did not say that he
15 was motivated to honor Mr. Yagami's request because he was
16 considering the bank's bonus pool. There is no e-mails, no
17 recorded conversations in which anybody is saying, well, look,
18 it is really important that we do what the swap traders want
19 because we need to improve the bank's overall bonus pool. And
20 any of these particular swaps, the impact that a single-panel
21 bank could have had on any particular swap, it would be so
22 small as to not have any possible impact on a bonus pool.

23 I just wish to address the government's argument in
24 that papers. That would be pure speculation and nothing but.
25 There is no basis to suggest that the defendants would have

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1 been doing anything or motivated by anything other than to
2 assist their employer in what, I submit, is a, perhaps,
3 misguided -- the court would certainly say very misguided --
4 effort to do their job.

5 (Continued on next page)

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1 MR. SCHECHTER: But it's to benefit, it's to help
2 their employer not, to line their own pockets. I think that's
3 a relevant factor and I know I've taken -- the Court has heard
4 me on that.

5 So I ask the question. Why, if there is no personal
6 gain, why did cash traders ever -- what's the motive? With no
7 apparent pecuniary motive, why did cash traders ever take into
8 account the swap trader's requests? Why were the swap traders
9 making these requests? What's important and what I think is
10 unique about this case is the nature of the offense. This did
11 not just happen at Rabobank. The government's deferred
12 prosecution agreements with financial institutions have
13 revealed that identical if not far more significant conduct
14 that was before this Court was engaged in by more than 125
15 people at ten different financial institutions. That's all
16 laid out. There is no dispute between the government and we
17 that the exact same thing happened everywhere and that's just
18 125 that the government sought to list in their deferred
19 prosecution agreements and CFTC resolutions and all that. So
20 it's clearly far more than that number.

21 Why did that happen? Why did the Deputy Governor of
22 the Bank of England call Barclays and tell them to put their
23 rates lower than they otherwise would because they did not want
24 the market to be worried that Barclays was having trouble
25 borrowing money? In other words, the Deputy Governor of the

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1 Bank of England says to Barclay submit a false LIBOR rate, they
2 direct them to submit a false LIBOR rate. And why did this
3 happen? Why was it so widespread? And I submit, your Honor,
4 that there was something different about the nature of this
5 offense than any other fraud offense. I submit, your Honor,
6 that the lines here, the enormous widespread nature of this
7 practice, so as to really become -- it's an industry practice,
8 is explained because the lines here were blurrier, that when
9 the Deputy Governor of the Bank of England calls Barclay and
10 says lower your rates, there's something about it that is not
11 obvious that it's wrongful, or we can conclude that hundreds of
12 people, certainly more than 125 people went to work every day
13 in the city of London and they thought to themselves today I'm
14 intentionally committing fraud. This is what I do, this is my
15 job.

16 THE COURT: I don't know why you think this is so
17 unusual. Again, I take the analogy of the mortgage bank
18 security bubble. So everyone who was, for example, soliciting
19 someone who they knew really did not qualify for a mortgage to
20 put false statements down on their mortgage application so that
21 the mortgage could be obtained, which could then be part of a
22 pool that could be sold as securities to people who were misled
23 into believing that the risk was a lot less than it was,
24 everyone who did that knew at a minimum that what was being put
25 down in that mortgage application was not true; the person

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1 submitting it knew it was not true and the person soliciting
2 knew it was not true. And there were all sorts of pressures,
3 economic and otherwise, that were pushing hundreds of people to
4 do that. But it wasn't because they were personally pocketing
5 money when they obtained that signature on that application.

6 MR. SCHECHTER: Your Honor, but that's another example
7 where no one has been criminally prosecuted.

8 THE COURT: Firstly, that's a little bit of an
9 overstatement but second of all, I'm not sure that matters.
10 The question you were raising was why do people do this and
11 what I'm suggesting to you that common experience and recent
12 experience suggests that the kinds of situations you're
13 describing are not so unusual. And one doesn't have to just
14 dwell with the -- you can think of the S and L crisis where
15 there were considerable overstatements of the risk of things
16 that savings and loan associations were engaged in and it was
17 very widespread. In fact, it was so widespread that there the
18 Department of Justice in an era when it had a different view of
19 who should be prosecuted, successfully prosecuted 800 people,
20 virtually none of whom were lining their pockets directly in
21 the sense that you've been referring to.

22 So I'm not persuaded yet that this is such an unusual
23 or unique situation.

24 MR. SCHECHTER: Well, your Honor, my point is, what
25 I'm attempting to do, and obviously I'm not doing a very good

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1 job --

2 THE COURT: You always do a good job, Mr. Schechter.
3 Don't worry about that.

4 MR. SCHECHTER: What I'm attempting to do, your Honor,
5 is suggest to the Court that not all offenses are the same and
6 that there's something about the nature of this offense as
7 indicated by its widespread nature and other factors as well,
8 which perhaps I'll have better luck with the Court in
9 suggesting that there is something about the nature of this
10 offense which is different than most criminal offenses.
11 Perhaps I failed with the widespread nature.

12 Let me point out this. This occurred out in the open.
13 There was no effort to conceal it. The unanimous testimony of
14 all the witnesses in this case as well as is laid out in all
15 the government's corporate prosecutions, no one tried to
16 conceal this. This happened out in the open. The head of
17 treasury at Rabobank sat directly across from Mr. Allen. There
18 was nothing, there was no efforts to conceal, there was no
19 efforts to -- there was no clandestine meetings at which the
20 plan was hatched --

21 THE COURT: I think while there's some element of
22 truth to what you're saying here, I think the testimony at
23 trial shows this was not known, for example, to the people on
24 the other side who were relying on LIBOR as an objective
25 measure.

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1 MR. SCHECHTER: Certainly true. But my point is this:
2 That in -- my suggestion is that the lines were blurrier here
3 because if people thought to themselves, if all 125 of these
4 people; Mr. Allen, Mr. Conti, thought they were doing something
5 wrong, that it would be an odd thing to do to have every day,
6 as Mr. Robson said, there would be a shout, okay, "Who needs
7 this for LIBOR?" It's an odd thing to do if people are
8 knowingly, intentionally committing a --

9 THE COURT: I think it would help, to have a further
10 debate, you are bound as I am bound by the jury's verdict. The
11 jury found that this was an intentional fraud. I personally
12 think the evidence of that was strong. I don't disagree with
13 the jury in any respect. But you are bound by it even if you
14 did disagree with it.

15 MR. SCHECHTER: My point is not to suggest -- I'm not
16 here to quarrel with the jury's verdict. That's not my point.
17 My point is that not all criminal offenses are the same and not
18 all criminal offenses warrant the same penalty and I think
19 there is a difference when the evidence shows that somebody is
20 going 70 through a stoplight as somebody is walking across the
21 street and what I'm suggesting is that there are facts and
22 circumstances about this offense, your Honor, which suggests
23 that the lines were blurrier, that the nature of the offense is
24 different than some.

25 For example, your Honor, we have studied carefully

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1 your Honor's opinion in the case of Rajat Gupta. When Rajat
2 Gupta leaves the Goldman Sachs board room and calls Raj
3 Rajaratnam to tip him about Warren Buffet's investment, there
4 is no question that he knows he is engaged in a criminal act.
5 There is no question that he is engaged in what your Honor
6 described as an egregious breach of trust. No question. He
7 can't have any doubt.

8 There are facts about this which suggests that this
9 offense is less venal, and there's indicators -- which I am
10 probably unsuccessfully trying to lay out for the Court. It is
11 enormously widespread. It is done out in the open. No one
12 cares who hears. It is internally audited at Rabobank. It is
13 brought to their attention that Mr. Yagami is making requests
14 to Mr. Robson of what LIBOR submissions should be put in.
15 Internal audit sees it, doesn't care, does nothing. There are
16 reports to the British Bankers Association that this is
17 happening. There are regular reports. The British Bankers
18 Association is aware, the Financial Supervisory Authority in
19 the UK is aware of it. Mr. Allen, we heard the tape, called
20 the Federal Reserve investigators and says that LIBOR rates are
21 being influenced by swap trader requests and the Fed also does
22 nothing about it.

23 My point is not that they're not guilty. I'm not here
24 to quarrel -- there may some another day --

25 THE COURT: I understand you're not waiving any of

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1 your appellate rights.

2 MR. SCHECHTER: But that's not my point. My point is
3 I am submitting to your Honor, as your Honor compares it to
4 other offenses, there are odd things about this offense which
5 suggests that the lines are blurrier and it is an offense that
6 should be considered different from most fraud offenses which
7 come before the Court and I think are relevant for
8 consideration of sentencing.

9 THE COURT: All right.

10 MR. SCHECHTER: Mr. Allen doesn't pay cash bribes. He
11 doesn't destroy evidence. There's nothing being done by
12 anybody to conceal the conduct. I think that is a window to
13 the state of mind of the people that are engaged in this
14 practice. Mr. Robson never said he did anything to hide it. I
15 think it is a window to the state of mind of the people that
16 are engaged in this conduct. It is worthy of the Court's
17 consideration of the venality, of the seriousness of the
18 offense. And I don't mean to suggest when I say that, that
19 it's not serious. That's not my point. My point is, that as
20 your Honor compares all of the defendants that your Honor has
21 sentenced I think these are relevant factors to compare and
22 contrast and it will be my request that your Honor consider a
23 non-custodial sentence. I'm trying to lay out the factors
24 which would support the imposition of such a sentence.

25 Another factor. Lee Stewart, the government's witness

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1 who the government clearly believes is a truth teller, they
2 entered into a cooperation agreement, they called him to the
3 witness stand and presented his testimony before the jury. He
4 said that it wasn't considered inappropriate. His
5 understanding was that it wasn't considered inappropriate at
6 Rabobank to engage in this conduct. He was asked: "Between
7 2005 and 2009 you never thought about or you never really
8 considered whether sharing your LIBOR preferences with cash
9 traders was appropriate or inappropriate? That didn't cross
10 your mind?

11 "A. At Rabobank it wasn't considered inappropriate to do that.

12 "Q. When you left the bank in 2009, you had no inkling that
13 LIBOR submissions at Rabobank were an issue or a problem?

14 "A. No."

15 This is the government's witness. They believed that
16 man was telling the truth as he stood on the witness stand and
17 he says I didn't -- he didn't see it. It did not cross his
18 mind that this was inappropriate conduct.

19 Again, my point is not that no offense was committed.
20 My point is, that as your Honor compares Mr. Allen to the many
21 defendants that your Honor has sentenced, that is worthy of the
22 Court's consideration that the government's own witness didn't
23 see it. My point is that the lines were blurrier.

24 There are not many frauds, none that I can think of
25 where there have been individual prosecutions -- I'm trying to

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1 distinguish the mortgage-backed securities example that your
2 Honor has provided -- there are not -- I cannot think of frauds
3 where the conduct occurs across an entire industry at every
4 financial institution out in the open with the knowledge of
5 regulators, being discussed with regulators. It's just
6 different. That's my point.

7 There are other things that I think are different
8 about this offense than others. And I will note, by the way,
9 your Honor, I'm sure your Honor will be aware that there were a
10 number of brokers who were charged with LIBOR manipulation in
11 the United Kingdom and they were acquitted.

12 THE COURT: Yes, but of course Mr. Hayes was
13 convicted. Every case was different and I don't think we can
14 draw the -- I think there's one important aspect of the Hayes
15 sentence that I want to ask the government about, but I'll flag
16 it right now because you were the one who raised it. You
17 stated and as near as I was able to check it out it appears to
18 be correct, that under British law, while his sentence was
19 nominally eleven years, originally 14 and then reduced to 11,
20 in fact he will only serve 5-1/2 years in prison and he will be
21 released to the community for the other 5-1/2 years.

22 I was really taken aback when I learned that because
23 it reminds me a little bit of the system that the U.S. did away
24 with, the parole system where a judge could say, oh, I'm
25 sentencing you to 15 years but in reality in most cases,

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1 particularly in white collar cases, it would be five years
2 because under the law then he could be paroled after one-third
3 of his sentence.

4 British law as far as I can determine, it goes even
5 further. They mandate that you be released after one-half of
6 your sentence unless you've committed some other offense or
7 something like that. So the reality was that Mr. Hayes, who I
8 think everyone agrees was in various respects more culpable
9 than either defendant here, received a sentence in fact of
10 5-1/2 years.

11 MR. SCHECHTER: That's correct, your Honor.

12 THE COURT: I'll hear from the government on that in a
13 minute. We need to hear from the government, so I'll ask you
14 to bring it to a conclusion.

15 MR. SCHECHTER: I will attempt to do so. My only
16 point in mentioning the broker's acquittal, watchers of that
17 trial reported that the view was the LIBOR system was broken
18 well in advance of the conduct and that was the reason for the
19 acquittal. Again, my point is just that the lines here are
20 blurrier.

21 A couple of other facts that I think make this one
22 different than the vast majority of the cases your Honor sees
23 is -- I'm not trying to excuse it, I'm merely trying to
24 distinguish it among other defendants convicted of fraud
25 offenses. The deceived parties were sophisticated swap

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1 participants, most of whom were in financial institutions
2 engaged in exactly the same conduct. The government is unable
3 to in this unusual case identify any loss suffered by any
4 counter party and we think that makes it different and supports
5 a non-custodial sentence. That's not it. We think that
6 Mr. Allen's involvement in the offense is more limited and that
7 is also worthy of the Court's consideration.

8 Mr. Allen, the government recounts in its papers, his
9 job was to, was the supervision of the bank's liquidity. The
10 LIBOR submissions is not part of what he supervised. It is not
11 what he did on a regular basis. It is not the heart of what he
12 did each and every day. That's because LIBOR submitting we all
13 learned is a simple task. It takes a couple of minutes. It
14 does not require any interaction with a supervisor and that was
15 the testimony of Mr. Yagami, Mr. Stewart and Mr. Robson, all of
16 whom testified that Mr. Allen did not supervise their LIBOR
17 submissions, he didn't supervise Mr. Stewart at all.

18 He would submit U.S. dollar LIBOR on extremely rare
19 occasions. The testimony was a couple of times a year. He
20 would submit LIBOR only when Mr. Conti and Mr. Robbins were out
21 of the office. It would make sense that it would only be on
22 those occasions that anybody would be directing their request
23 to Mr. Allen as opposed to somebody else.

24 And that's it. We have the recorded calls and there
25 is no recorded calls beyond these 14 -- these 16 e-mails to

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1 which Mr. Allen responds only four times. That's the extent of
2 the conduct. There is no recorded call making a request. My
3 point is only that Mr. Allen's -- worthy of consideration by
4 the Court, is his limited involvement in this offense.

5 THE COURT: All right. I'm going to need to cut you
6 off. We've gone over an hour.

7 MR. SCHECHTER: Your Honor, I have one more point
8 which I really think is very important.

9 THE COURT: Go ahead.

10 MR. SCHECHTER: And that is that your Honor I think
11 needs to consider the disparities between, Mr. Allen stands
12 before the Court and Mr. Conti's response submission laid out
13 in chapter and verse identical and much worse conduct committed
14 by others at other financial institutions, and I think it is
15 fair consideration for the Court in fashioning a sentence to
16 consider this disparity. Why is it -- and we're six years into
17 the government's investigation -- why is it that -- is it fair
18 that Mr. Allen and Mr. Conti are the only ones in the United
19 States to go to prison for this conduct when the government is
20 aware of these more than 125 others? Is his conduct worse than
21 the senior executive at Barclays who headed the FX and money
22 market committee who said in a conversation with Mr. Ewan that
23 Barclays was dirty clean? Is it worse than RBS's global head
24 of money market that talked about keeping LIBOR down because of
25 big fixes in London? Is it worse than UBS's head of short-term

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1 interest rate trading who agreed it was UBS's, quote, natural
2 right to reflect our interest in the LIBOR fixing process?

3 And one of the factors is to avoid unwarranted
4 sentencing disparities. And this is a gross disparity, your
5 Honor, and I think that looking at all of these people who
6 engaged in identical conduct, and who will never be brought
7 before the Court, will never risk incarceration, I think that
8 is a very significant factor for your Honor to consider in
9 fashioning Mr. Allen's sentence.

10 Your Honor mentioned Mr. Hayes, and as your Honor
11 noted, there is no comparison between Mr. Hayes' conduct and
12 the conduct here. Mr. Hayes paid cash bribes to brokers in
13 order to disseminate false market information and he obstructed
14 justice. He told a witness to leave the United States in order
15 to avoid being interviewed by the Justice Department. There is
16 no comparison, theres nothing like that in the conduct
17 before your Honor. There is no comparison and I wish to
18 emphasize that if your Honor does impose a custodial sentence,
19 that the Bureau of Prisons will place Mr. Allen and Mr. Conti
20 in harsher conditions, much harsher conditions, your Honor. We
21 attached several reports of the conditions that exist in
22 private prisons which the Bureau of Prisons will subject them
23 to and that consequence of your Honor's sentence is worthy of
24 consideration. The fact that placing them in prison will be
25 different and worse and harder than any other, than other

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1 defendants, other U.S. citizen defendants that your Honor will
2 sentence. That is simply because they're foreign nationals.
3 They will be ineligible for a minimum security or a low
4 security designation. Instead they will be sent to these
5 institutions, these privately run institutions where there is
6 no education, there are none of the rehabilitative
7 opportunities that exist in the prisons simply because they're
8 foreign nationals and that's not fair and it's harsh.

9 THE COURT: All right. Thank you very much. Let me
10 hear from the government.

11 MR. YOUNG: Your Honor, I think the lines were clear.
12 The lines were not blurry. When Mr. Allen got up and testified
13 he didn't say I thought it was okay to influence this rate to
14 suit our trader positions. He said I understand that you can't
15 do that. And that's what Mr. Robson said, that's what
16 Mr. Stewart said that's what Mr. Yagami said. I would submit
17 that it's obvious. I mean, if you are manipulating a rate it's
18 a zero sum game when it's a swap. Somebody else on the other
19 end of the swap is going to lose out.

20 The biggest problem with the crime, Judge, I looked at
21 what the Court said in sentencing Mr. Gupta and the Court there
22 observed: "The effect of the crime is to place in jeopardy the
23 integrity of the marketplace which is one of the most valuable
24 assets this country possesses; in an even broader sense to
25 suggest cynicism about how the financial markets work and how

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1 business is conducted. Once you have a situation where people
2 say well, it's all rigged, it's all fixed, it's all a bunch of
3 people with inside information getting rich at the expense of
4 the rest of us, you create cynicism that is terribly hard to
5 overcome." And that's the problem with this case. By rigging
6 this market the defendants not only undermined the integrity of
7 the market, but they harmed public confidence in those markets.
8 And that is a very real and non-theoretical problem. Because
9 if people don't have confidence in the markets they're not
10 going to invest their money. That is the single biggest
11 problem with this case, your Honor.

12 It is certainly the case that there are other people
13 out there manipulating the LIBOR rate. I mean, there were
14 other prosecutions, there were deferred prosecution agreements.
15 And what that shows, your Honor, is that there are a lot of
16 people who if given that opportunity, if given the opportunity
17 to rig a benchmark in their favor, they're going to do it. And
18 while a deferred prosecution agreement and a corporate fine can
19 have very helpful consequences in deterring that conduct the
20 fact this conduct is so pervasive and that many institutions
21 that have entered into TPAs for rigging LIBOR had people
22 continue on and rig the FX file. I think what that teaches us
23 is that no deterrence short of incarceration is going to deter
24 people from taking advantage of those situations.

25 THE COURT: So in light of that, what do you say to

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1 the argument that why hasn't the government gone after a lot
2 more individuals?

3 MR. YOUNG: Well, I would say a couple of things.
4 Mr. Shechter's argument assumes that we're done investigating
5 and this is the end of the story as far as LIBOR is concerned.
6 And while I can't make any representations about what may or
7 may not happen tomorrow, what I can tell you is that this is
8 not the end of the story. If we come across another case of
9 LIBOR manipulation, we think it's a good case we believe beyond
10 a reasonable doubt that it will be proven, that's a case that
11 we can bring. So I think it's probably more fair to say that
12 the defendants are on the earlier end of the individual
13 prosecutions than some other folks.

14 I would also note, Judge, we have charged, the
15 Department of Justice has charged a number of people in this
16 case. We charged Tom Hayes as well. He was prosecuted in the
17 United Kingdom. There was a guy named Mr. Darren who is
18 residing in Switzerland and a number of the ICAP brokers who
19 were acquitted. But what's also important is that the United
20 Kingdom has charged 24 individuals. So when we make
21 prosecuting decisions we have to decide is this a good use of
22 taxpayer dollars, is there another sovereign that's going after
23 these same people, does it make sense for two sovereigns to
24 chase after the same folks?

25 THE COURT: I believe there's still a fugitive in this

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1 very case. Do I have that right or not?

2 MR. YOUNG: You do have that right. There are two
3 other people. Mr. Thompson is in Australia. We've also
4 charged Mr. Motomura. It's simply not the case that we decided
5 to charge Mr. Allen and Mr. Conti for some personal animus. We
6 went after the conspiracy the best way we knew how to do it.

7 And, Judge, there was a guilty plea of a Deutsche Bank
8 trader not long ago in this very courthouse.

9 At the trial it was certainly true that both
10 defendants had family members that came. They came all the way
11 across the ocean, they sat in on the trial and the Court had a
12 window of their friends and their family in the letters that
13 were written. And I remember we thought to ourselves if these
14 defendants have family members that are willing to support them
15 in such a difficult and trying circumstances, they must have
16 done something right and that is certainly probative of 3553.
17 But here's the problem. The problem is that people who are in
18 a position to rig the FX file or to rig a LIBOR benchmark by
19 and large are similarly situated to these defendants when it
20 comes to having family members, when it comes to having people
21 who care about them. And what I would urge the Court to
22 remember -- while there may be no dispute that these defendants
23 are well liked in their communities and they have beautiful
24 families that support them, it should be noted that their
25 offense was not an aberration in the sense that they got up

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Sentence

1 almost every morning and participated in a scheme that went on
2 a number of different years. And that's an important
3 distinction we think to draw. And so --

4 THE COURT: It's also a distinction with the Gupta
5 case, for example, where it was a single, one-time violation.

6 MR. YOUNG: It is. This wasn't somebody who had a
7 lifetime of trading that made a bad trade. This is the way
8 they did business. And I think another helpful part of the
9 Gupta decision is that the Court said the offense, the way
10 these people, the defendant committed the offense that's
11 probative of their character, too. And the problem with this
12 case is that you have two defendants that decided that they
13 wanted to engage in conduct which they knew full well would
14 underline the credibility of the LIBOR benchmark and cause
15 people to question the integrity of the markets. They knew
16 that that would happen and they decided to go forward with that
17 scheme anyway. They subordinated the most important numbers in
18 the financial universe to simply gain an edge on their counter
19 parties.

20 (Continued next page)

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1 MR. YOUNG: Judge, what we have is sad situation.
2 What we are asking the court to do will no doubt have terrible
3 consequences on the defendant's family. I am glad we don't
4 hold the gavel today, but we think for the purposes of
5 deterrence, a custodial sentence is warranted and it is
6 necessary.

7 THE COURT: I wanted to ask you, just to make sure
8 that there is no disagreement because it may be relevant, that
9 is, do you disagree that under the British sentencing system,
10 Mr. Hayes' effective prison sentence was five and a half years?

11 MR. YOUNG: I don't want to hold myself out as an
12 expert. I don't know if it is five and a half. I would agree,
13 everything I know about their system says that a defendant, if
14 they have good behavior, will serve significantly less time
15 than the time to which they are sentenced.

16 THE COURT: What I am relying on here is a publication
17 of the government of the United Kingdom, complete with a
18 beautiful logo of the crown. It appears at
19 *www.gov.uk/typesofprisonsentence*, and it says: If a sentence
20 is for 12 months or more, the first half of the sentence is in
21 prison and the second half is in the community.

22 I have no reason to think that is other than what the
23 law is in the U.K.

24 MR. YOUNG: I don't either. I don't either.

25 Judge, I guess I don't want to impose too much more

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1 time on the court. I would like to address one more last point
2 on the question of why not more prosecutions. There is a
3 number of reasons, but one of the answers is, these are really
4 difficult cases. They are hard cases to take forward. They
5 are hard cases to detect.

6 We have a number of authorities, Gupta included, which
7 say when you have a crime that is difficult to prosecute and a
8 crime that is difficult to detect, that requires a relatively
9 stiff punishment, to change the calculus of the would-be
10 offender.

11 Judge, unless the court has any questions you would
12 like me to address, we would submit on the papers, and thank
13 you for all the energy you spent on the case.

14 THE COURT: Thank you.

15 Let me hear from the defendant, if he wishes to be
16 heard.

17 THE DEFENDANT: Your Honor, over the last three years,
18 was involved in the investigation of the trial against me. I
19 have constantly asked myself what I should have done
20 differently. Over the past two years, I have read and re-read
21 over and over again the e-mails I sent and received.

22 I so wish that when requested, the stock trades were
23 communicated to me, I would have just said, no, stop. I wish
24 that after receiving a request, I would have gone to compliance
25 or done something more to stop it. I live with that regret

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1 every day of my life. I wish I was more tuned in, that my
2 sense of judgment was different.

3 If only I had done something more, my family might be
4 spared in all this plague, the weight that I will carry with me
5 forever. To think that these failings may lead me to be
6 separated from my daughters is unbearable. The idea that they
7 may not experience the same type of childhood that I did, where
8 they are safe and secure with a father who is present and
9 loving, the grief is just overwhelming.

10 Your Honor, the last three years have taken a huge
11 toll on myself and my family. It has been truly punishing
12 time. I have suffered from anxiety and depression and sought
13 counseling to help me cope with the situation that I find
14 myself in. I do not feel I am the same person that I once was,
15 but I am consumed with worry about my family's future and what
16 it may hold.

17 I never stop thinking about the punishing effect it
18 has had on my partner, my children, my elderly parents, and on
19 their health. My partner Tracy and I have been together for
20 25 years and enjoy a strong, loving relationship built on
21 trust, respect, and honesty. Tracy has been extremely
22 supportive during this period. This has been incredibly hard
23 on her, and the potential of a life apart from each other and
24 the thought of bringing up our children on her own.

25 I am so concerned with the effect this has had and

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1 continues to have on my two young daughters. I can see how
2 they have suffered already. They are no longer the
3 happy-go-lucky, bubbly girls they were. It has affected their
4 sleep, their school work. And I constantly ask, when will I be
5 going? When will I come back?

6 I have been a full-time father for the last seven
7 years, staying at home and rearing my children. I have formed
8 an incredible bond with my daughters. They mean everything to
9 me. They are still so young and emotionally vulnerable, and to
10 be separated from them by thousands of miles in another
11 country, their ability to have regular physical contact, or to
12 not be there for them in their formative years is a devastating
13 prospect for them and for me.

14 I plead with you to please take these effects into
15 consideration and show leniency when you're assigning my
16 sentence.

17 I thank you.

18 THE COURT: Thank you very much.

19 I want to first make reference to the law that does
20 govern this sentence, because although I have had some flippant
21 remarks to make about the guidelines, and the law permits me to
22 do that, I am bound by and also very appreciative of congress'
23 wisdom in imposing Section 3553(a) of Title 18 entitled The
24 Imposition of Sentence.

25 The first factor that the court must consider under

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1 that section, as I have mentioned earlier, is "the nature and
2 circumstances of the offense and the history and
3 characteristics of the defendant."

4 Now, as to the history and characteristics of the
5 defendant, as I previously mentioned, I am persuaded that there
6 is a great deal of good in Mr. Allen, and that in this, his day
7 of sentence, the court needs to take account of that. I don't
8 view that as something that is extraneous to a sentence. It is
9 an important part of a sentence, when the whole human being in
10 front of the court needs to be judged.

11 But I also agree with the government that this was a
12 clear-cut and rather blatant fraud. Yes, it was a fraud that
13 others had involved themselves in as well, and that is not
14 irrelevant, but the proof beyond a reasonable doubt at that
15 trial that showed that Mr. Allen knowingly, unlawfully,
16 willfully, intentionally engaged in a quite serious fraud. It
17 was a fraud in the bigger picture, as the government points
18 out, that involved the rigging or the attempted rigging of what
19 is one of the most important benchmarks in the financial
20 markets. The benchmark to which billions, if not trillions, of
21 dollars in mortgage loans, consumer debt, derivative contracts,
22 and other financial instruments are tied. I don't want to
23 overstate it. This was just one small part of that huge
24 market, but the undermining of the reliability and objectivity
25 of LIBOR is a very serious offense, and that cannot be

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1 overlooked.

2 The second portion of Section 3553(a) says that the
3 sentence needs to be sufficient but not greater than necessary
4 to carry out four different factors. The first is to reflect
5 the seriousness of the offense and also promote respect for the
6 law and provide just punishment. I have already indicated that
7 I consider this a very serious offense.

8 The second is to afford adequate deterrence to
9 criminal conduct. Now, I don't think anyone believes that
10 there is much need here for specific deterrence. It is very
11 unlikely that Mr. Allen would commit this offense again. But,
12 of course, what that provision is mainly addressed to is
13 general deterrence. General deterrence is one of the most
14 difficult aspects of sentencing for any judge to calculate,
15 because the truth of the matter is that no one really knows how
16 much a given sentence will act as a general deterrent. It
17 would be wonderful if we could say, oh, well, a ten-year
18 sentence deters twice as much crime out of a particular kind as
19 a five-year sentence. No one can say that.

20 The studies that go back several decades all suggest
21 that there are too many factors involved and that no one can
22 really make an overall assessment from, if you will, a criminal
23 logical standpoint of how a given sentence is likely to affect
24 deterrence. That generally, therefore, cuts in favor of a
25 lesser sentence or no sentence, because if you can't make a

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1 determination of how much deterrence there is going to be, how
2 can you use that as a factor to impose something as serious as
3 a criminal term.

4 However, there is a body of literature, much of it
5 going back several decades to the works of Gilbert Geis, who
6 was one of the major figures in this area for many decades, now
7 unhappily deceased, that suggest what common sense would also
8 suggest, which is that some prison time does have a deterrent
9 effect that a complete absence of prison time does not. Just
10 thinking about it in common sense terms, if there were never
11 any prison term for any crime, there is no doubt that crime
12 would run rampant.

13 It is a particularly strong deterrent, Mr. Geis'
14 studies suggest, in the white-collar area because people who
15 commit white-collar crimes, particularly of the sort that
16 Mr. Allen committed -- as to say is distinct from professional
17 con men or things like that -- are people to whom prison and
18 the very thought of prison is so antithetical to the way their
19 lives have developed, that even the possibility of going to
20 prison is more likely to have a deterrent effect in their cases
21 than, say, in the case of some drug addict or person who is
22 from a more crime-ridden background.

23 At the same time, I am aware of nothing that suggests
24 that that effect, that deterrent, effect on white-collar
25 criminals of prison sentences cannot be achieved through

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1 relatively short sentences. I think there are no studies that
2 suggest the opposite, that huge, big sentences will serve a
3 general deterrent effect in white-collar cases that is not
4 substantially served by short sentences.

5 I have imposed, on occasion, long sentences in
6 white-collar cases. I sentenced an attorney named Mark Dreier
7 to 20 years, but had nothing to do with the belief that that
8 was going to achieve a greater deterrence than if I had
9 sentenced him to two years. It had everything to do with the
10 fact that, unlike Mr. Allen, he was a despicable human being
11 who had spent much of his adult life involved in fraudulent
12 activity. But on the issue of deterrence, it seems to me the
13 beginning of wisdom in the white-collar area, that some prison
14 time has an important deterrent effect, but a lot of prison
15 time doesn't add very much.

16 A related aspect of this is a statement that appeared
17 in the government's memorandum in this case involving Mr. Allen
18 that I thought was very well-spoken. It is at page five. It
19 says, "The LIBOR and foreign exchange manipulation scandals
20 have exposed a culture of cheating on the trading desk of many
21 of the world's largest financial institutions that can be
22 checked only by the incarceration of wrongdoers."

23 I think that is right. I am mystified that in some of
24 the recent history of the past, that approach was apparently
25 not taken, and only the institutions were gone after. But also

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1 the Deputy Attorney General has indicated that that's the
2 policy of the past, not the policy of the present.

3 In any event, here we have a case where the
4 individuals have been charged, and one cannot ignore, I think,
5 to my mind, the almost common sense observation that punishing
6 individuals with some prison time is infinitely more likely to
7 have a deterrent effect on widespread misconduct than
8 extracting monies from corporate parents, usually at the cost
9 of their innocent shareholders.

10 The third factor under Section 2 of Section 3553(a) is
11 to protect the public from further crimes of the defendant. I
12 see nothing to indicate there will be any further crimes by
13 Mr. Allen.

14 The fourth is to provide the defendant with needed
15 educational or vocational training, medical care, or other
16 correctional treatment. This is irrelevant, other than in the
17 sense that Mr. Schachter brought to the court's attention that
18 Mr. Allen may not qualify under Bureau of Prison policies for
19 the kind of institution that someone in his position would
20 normally be sent. I don't think, when all is said and done,
21 that is a major factor one way or the other, but it is a factor
22 that bears a little bit in Mr. Allen's favor, or in the notion
23 that the sentence should be lower than it might otherwise be.

24 The third factor under Section 3553(a) is the kind of
25 sentences available. I don't think we need to say anymore

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1 about that.

2 The fourth factor is the kinds of sentencing range
3 established by the sentencing commission. Well, I have already
4 expressed my tepid views on that subject.

5 The fifth factor is any policy statement of the
6 sentencing commission. I don't know that there is any that
7 bears on this particular situation.

8 The sixth is the need to avoid unwarranted sentence
9 disparities. Now, this is always a very difficult thing to
10 assess, because every case is different. When a case is not
11 before the same judge, you only have indirect knowledge, at
12 best, of the facts. Nevertheless, I think everyone here agrees
13 that Mr. Hayes' misconduct was more severe and culpable than
14 that of either Mr. Allen or Mr. Conti, and that is why I was
15 struck by the fact that his sentence was five and a half years.

16 In my mind that, so far as disparities are concerned,
17 suggests that Mr. Allen's sentence has to be substantially
18 below that, but that is just one factor.

19 Then the seventh factor, the last factor, is the need
20 to provide restitution. I don't believe that is involved in
21 this case. Let me just be sure of that, insofar as the
22 government is concerned.

23 MR. YOUNG: It is not involved in this case.

24 THE COURT: Very good.

25 There are a lot of other factors that are implicit in

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1 those seven factors that I just mentioned. I have already said
2 about the family. My heart goes out to the family of Mr. Allen
3 and Mr. Conti. It is one of the many terrible things about
4 prison terms, that the victims are often the families of the
5 incarcerated. I mentioned before the mass incarceration for
6 which this country suffers, to its shame, to its total shame,
7 but of those 2.2 million people in prison right now, an amount
8 that has stayed more or less steady or increased over the last
9 25 years, even as crime rates have gone steadily down, 40
10 percent of them are young black males. The effect on their
11 families, on their entire communities, is tragic. This is
12 something that the court must consider in this case, the effect
13 on Mr. Allen's family, and when we get to the next sentence, to
14 Mr. Conti's family, because it would be barbaric to say that
15 because we are ruining the lives of black families, we should
16 also ruin the lives of white families. Obviously the right
17 lesson is to reduce the sentences in the other cases.

18 When I weigh all these things together, I come to the
19 conclusion that there must be prison time here. The offense is
20 too serious. You can't go around as, in my view, both
21 Mr. Allen and Mr. Conti were doing, and helping rig one of the
22 most important markets in the world and not pay the price. And
23 deterrence, in the limited sense I have mentioned, is also
24 important, but I think a great many other factors cut in favor
25 of a modest sentence.

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1 The sentence of the court is that the defendant is
2 sentenced to 24 months on each of the 19 counts to run
3 concurrently. 24 months. I see no need for supervised release
4 and the probation office does not recommend supervised release
5 to follow prison. I am also persuaded by the defense
6 submissions that no fine is appropriate in this case. There
7 is, however, a special assessment of \$100 on each of the counts
8 that must be paid for a total of \$1,900 mandatory special
9 assessment.

10 I don't know that any forfeiture is involved, is it?

11 MR. YOUNG: We are not seeking forfeiture.

12 THE COURT: Very good.

13 The sentence is pretty much straight across the board,
14 two years, 24 months.

15 Now, before I advise the defendant of his right of
16 appeal, is there anything either counsel needs to raise for the
17 court?

18 MR. YOUNG: Not from the government, your Honor.

19 MR. SCHACHTER: Your Honor, I don't know if this is
20 the appropriate time. We would ask for a recommendation from
21 the court. Would the court like to hear that now?

22 THE COURT: Sure.

23 MR. SCHACHTER: We ask that court include in the
24 judgment and recommendation, our hope is to avoid one of these
25 privately contracted facilities, and so we ask that the court

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1 recommend that the defendant be designated to FCI Allenwood,
2 which is pretty close to Newark. And while travel and
3 visitation will be very difficult given that his family resides
4 in the U.K., it will be made easier through that
5 recommendation.

6 THE COURT: Just let me stop. I am perfectly happy to
7 make that recommendation and will. I am sure you have told
8 your client that, of course, I can only recommend, I cannot
9 order that. The Bureau of Prisons makes the determination.

10 MR. SCHACHTER: Yes, your Honor.

11 We would also ask that the court recommends that
12 Mr. Allen not be designated to one of the Bureau of Prisons'
13 privately contracted facilities. We ask for that
14 recommendation. We don't know that it will be of assistance,
15 your Honor, but --

16 THE COURT: I am happy to make that recommendation. I
17 think there is a lot of literature that suggests that the
18 private prisons and their ownership have become one of the
19 leading lobbies for the continuation of mass incarceration in
20 this country, but maybe that is unfair, they are not here to
21 protest. But I will make that other recommendation.

22 MR. SCHACHTER: Thank you, your Honor.

23 THE COURT: Mr. Allen, you have a right to appeal this
24 sentence. Do you understand that?

25 THE DEFENDANT: Yes, I do.

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1 THE COURT: If you can't afford counsel for any
2 appeal, the court will appoint one for you free of charge. You
3 understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Let's turn to Mr. Conti.

6 MR. WILLIAMSON: Thank you, your Honor.

7 Though he may not believe it himself, Mr. Schachter
8 addressed, I think, all of the many of the issues that apply to
9 both defendants, and so I'll keep my comments limited to
10 Mr. Conti's individual culpability.

11 As the government has acknowledged in their sentencing
12 submission, Mr. Conti was not the leader of the conspiracy.
13 Mr. Conti received no formal education in banking or finance.
14 He comes from a working class family. He entered banking
15 immediately out of secondary school, and everything he learned
16 about his responsibilities, both as a money market trader and
17 as a LIBOR submitter, he learned on the job.

18 As the government's witnesses testified at trial,
19 accommodating trader requests was common practice at Rabobank.

20 THE COURT: I think, by the way -- forgive me for
21 interrupting -- I think I never formally indicated that I had
22 adopted the presentence report calculation of the guidelines in
23 Mr. Conti's case, as I did Mr. Allen's case.

24 MR. WILLIAMSON: Thank you, your Honor.

25 THE COURT: Go ahead.

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1 MR. WILLIAMSON: As the government's witnesses
2 testified, accommodating trader requests was common practice at
3 Rabobank as early as the year 2000, at least five years before
4 Mr. Conti was given any responsibility over LIBOR submissions.
5 They also testified that they engaged in this practice for some
6 time without believing it was wrong. Mr. Yagami made requests,
7 he said, throughout 2005 and '6, and he did not come to believe
8 it was manipulation until later. Mr. Stewart, as Mr. Schachter
9 said, said that by the time he left the bank, he didn't realize
10 that the practice was a problem.

11 Now, the jury determined that Mr. Conti engaged in
12 this conduct knowing it was wrong. We respect that verdict.
13 But as Mr. Schachter eloquently argued, these facts suggest
14 that Mr. Conti's conduct was not the result of brazen disregard
15 for the law that the government argues that it was, but the
16 cultural factors were to obscure the seriousness of the
17 conduct.

18 I would point out, your Honor, that Mr. Conti's
19 conduct, as demonstrated by the evidence at trial, was not as
20 culpable as Mr. Robson's.

21 THE COURT: I think the government agrees with you on
22 that.

23 MR. WILLIAMSON: Thank you, your Honor.

24 Nor did Mr. Conti, like Mr. Stewart, have a direct
25 proprietary interest in the LIBOR submission that's were made.

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1 As I understand, Mr. Stewart had a proprietary contract with
2 LIBOR bank and made money directly of those submissions.

3 Again, Mr. Conti was, according to Mr. Robson's
4 testimony, instructed in how to submit LIBOR rates by
5 superiors. I would urge the court to consider all of this in
6 calculating Mr. Conti's relative culpability in order to avoid
7 unwarranted sentencing disparities between Mr. Conti and the
8 other defendants in this matter.

9 THE COURT: Thank you very much. Let me hear from the
10 government.

11 MR. YOUNG: Your Honor, I'll rest on the papers and on
12 my points that I made with respect to Mr. Allen, except to make
13 two observations.

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1 MR. YOUNG: I think the distinction between Mr. Conti
2 and Mr. Allen is, number one, Mr. Allen was in a subordinate
3 role. I think also, we would submit that Mr. Allen was not
4 entirely candid when he was testifying. That is a
5 distinguishing factor with Mr. Conti, so with those
6 distinctions, Judge, we rest on the papers and my arguments
7 that pertain to Mr. Allen.

8 THE COURT: Let me hear from Mr. Conti if he wishes to
9 be heard.

10 THE DEFENDANT: Your Honor, I will be very brief.
11 First, I want to thank you for your courtesy and decency
12 throughout the trial and this process. I've never faced
13 criminal charges before and certainly have never been put on
14 trial. You made the process somewhat less frightening and
15 intimidating and my family and I are grateful for that.

16 Secondly, I've always tried to conduct my life
17 personally and professionally with integrity and concern for
18 others, but I accept the verdict and the fact that you must
19 issue a judgment. There are certain sad realities that I must
20 come to terms with. I know that the career in banking that I
21 spent my entire adult life building is over and I may go to
22 prison in a country not my own far from home. But what I worry
23 about most, your Honor, is the effect that any separation is
24 going to have on my wife, Lisa, and my two daughters and my
25 son.

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1 Since I was first placed under investigation years ago
2 their lives have been completely turned upside down. I am
3 scared for their future. That they have gone through so much
4 turmoil pains me more than anyone can know. Your Honor, all I
5 want to now do is protected my family from harm and to get to a
6 point where we can just be a family again without all this
7 hanging over our heads, without pain, without grief. I will be
8 extremely grateful for your consideration in allowing that day
9 to come as soon as possible.

10 Thank you very much, your Honor.

11 THE COURT: Thank you very much.

12 So all the comments that I made of a general nature
13 with respect to the sentencing of Mr. Allen apply in
14 Mr. Conti's case. The big difference is that under any
15 realistic view of the situation he's less culpable. In
16 addition, as does Mr. Allen in a different way, he has a very
17 sympathetic background and family situation, so forth, all of
18 which I have taken account of.

19 So the sentence of the Court, which I will explain
20 more specifically in a moment, is he is sentenced to a year and
21 a day on each of the 19 counts concurrently. No supervised
22 release, no fine. I should say in his case it's nine counts,
23 so -- is that right? There were fewer counts with respect to
24 Mr. --

25 MR. YOUNG: We're counting eight, Judge.

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1 THE COURT: Okay. Whatever it is. Let's see. I'm
2 counting nine, but I'm counting counts 1, 4, 7, 8, 10, 13, 14,
3 15, 16. And if my fingers are correct, that's nine. Well --

4 MR. YOUNG: I think that's right.

5 THE COURT: Okay. So concurrently on each of the
6 counts, whether it's eight or nine, but I'm pretty sure it's
7 nine, and therefore a mandatory special assessment of \$900. If
8 it turns out there are eight counts it's \$800. We'll check
9 that before we issue a judgment but I think it's nine. But no
10 fine, no restitution, no forfeiture.

11 Now, the reason a year and a day is important is that
12 if your sentence is a year or less you don't qualify for good
13 time. Mr. Allen, for example, will qualify for good time and
14 that means his sentence can be reduced at the discretion of the
15 Bureau of Prisons by as much as 15 percent of his sentence and
16 I wanted Mr. Conti to have that same benefit. So while
17 otherwise I would have imposed a sentence of a year, half of
18 the sentence I imposed on Mr. Allen, instead I'll make it a
19 year and a day so that you will qualify for that good time
20 reduction in the discretion of the Bureau of Prisons.

21 Now, before I advise Mr. Conti of his right of appeal,
22 anything else counsel wanted to raise?

23 MR. WILLIAMSON: Yes, your Honor. We would make the
24 same request of a recommendation of a designation to Allenwood.

25 THE COURT: I will make the exact same recommendation.

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1 Mr. Conti, you have a right to appeal the sentence. Do you
2 understand that?

3 THE DEFENDANT: Yes, I do, your Honor.

4 THE COURT: If you can't afford counsel for the appeal
5 the Court will appoint one for you free of charge. Do you
6 understand that?

7 THE DEFENDANT: I do.

8 THE COURT: Very good. All right. Anything else
9 counsel needs to raise?

10 MR. YOUNG: Judge, we would ask for a modification of
11 conditions of release.

12 THE COURT: What modification do you wish?

13 MR. YOUNG: What we would ask the Court to do is to
14 restrict, allow the defendants to self surrender, but that they
15 have to stay in the Southern District of New York or some other
16 agreeable venue until they can self surrender to their
17 facility.

18 THE COURT: I'm disinclined to impose that. These
19 defendants have not shown yet any propensity to flee. They
20 would ruin their careers forever if they did that. They would
21 probably ruin their family life because they could be found if
22 they simply fled back to England. They probably do need to set
23 a prompt surrender date. Now, of course, this may be affected
24 by any appeal. We'll worry about that if and when that occurs.
25 But why don't we say that the defendants are, barring any

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1 subsequent order, to surrender to the designated institution by
2 May 2 at 2:00 p.m. All right. Anything else we need to take
3 up?

4 MR. SCHECHTER: As your Honor alluded to, we do seek
5 bail pending Mr. Allen's appeal.

6 THE COURT: The bail will be granted on the same
7 conditions previously set, subject, of course to revision at
8 any time if either side has reason to believe they are a bail
9 risk. And I understand that the statute says about whether
10 there's a substantial issue for appeal and all like that.
11 Although I think technically it doesn't really kick in until
12 the moment of surrender, but while of course like all judges
13 think there's no issue on appeal nevertheless I think the
14 Kastigar issue is not without some appellate interest, so I'm
15 not going to order their immediate surrender.

16 MR. SCHECHTER: So, I guess, and I apologize, your
17 Honor --

18 THE COURT: The government is not seeking their
19 immediate surrender.

20 MR. SCHECHTER: But in terms of, our request would be
21 that he continue on the conditions set for his release during
22 the pendency of appeal until the Court of Appeals rules and I'm
23 not sure --

24 THE COURT: So I will grant that order with the
25 proviso that the government has the right at any time to come

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1 before the Court and say there's new information or reasons to
2 change that. That could even be after you file your appeal
3 brief and maybe he'll say, Judge, they didn't even raise a
4 colorable issue. I retain jurisdiction to change that, but for
5 now that will be the order of the Court for both defendants.

6 MR. SCHECHTER: Thank you, your Honor.

7 MR. WILLIAMSON: Thank you, your Honor.

8 THE COURT: Anything else? Thanks very much.

9 (Adjourned)

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